HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.21014 OF 1994

Between:

The Management of Singareni Collieries Company Limited, Area-I, Ramagundam Division, Godavarikhani, Karimnagar District, represented by General Manager. … Petitioner

And

The Industrial Tribunal – I, Hyderabad, represented by its Presiding Officer and another. …Respondents

:: O R D E R :

Counsel for the petitioner : Ms. V. Uma Devi for Sri K. Srinivasa Murthy.

Counsel for respondent No.2 : Sri Nuthalapati Krishna Murthy

5th December, 2006

This is a petition for quashing award dated 9-2-1994 passed by Industrial Tribunal-I, Hyderabad (for short, 'the Tribunal') in I.D.No.90 of 1989.

A perusal of the record shows that Andhra Pradesh Colliery Mazdoor Sangh (hereinafter referred to as 'the union'), which is affiliated to Indian National Trade Union Congress, through its Vice-

President, raised an industrial dispute in the matter of denial of promotion to two workers namely, Sri Macherla Laxmaiah and T. Kumara Swamy, who were employed as General Mazdoors at GDK-2A Incline of Singareni Collieries Company Ltd. at Ramagundam. The dispute raised by the union was referred by the Central Government under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 (for short, 'the Act') to the Tribunal. In the statement of claim filed by the Vice-President of the union, it was averred that the workmen had been appointed in the services of the Singareni Collieries Company Ltd. (for short, 'the company') as General Mazdoors (Category-I) in 1976; that for the last 12 years they were performing the duties of Bunker Door Mazdoors, but they were not promoted as regular Bunker Door Mazdoors. It was further averred that as Bunker Door Mazdoors, the workmen are required to supervise the loading of lorries, keep the bunkers clean, issue challans etc. The statement of claim also contained a reference to the promotion accorded to other General Mazdoors namely, Mohammed Ankoosh, Vallala Veeraiah and Ajit Singh, who were employed in GDK-5 and 5-A Inclines and it was averred that the action of the management not to promote Macherla Laxmaiah and T. Kurama Swamy despite the fact that they were working as Bunker Door Mazdoors for 12 years is arbitrary and discriminatory.

In the counter filed on behalf of the petitioner, it was pleaded that there are five categories of Mazdoors, but there is no channel of promotion from Category I to II, II to III, III to IV etc. According to the petitioner, the two workers were discharging the duties of Category I Mazdoors and not of any higher category. The assertion contained in the statement of claim that Bunker Door Mazdoors are required to supervise the loading of lorries was denied and it was averred that they used to clean the area around the bunkers and pull the chains attached to the pullies of bunkers, to load and unload the lorries and this did not require any skill. According to the petitioner, other jobs are

being done by clerical staff.

The union examined T. Kumara Swamy as W.W.1 and produced five documents, which were marked as Exs.W.1 to W.5. The management of the company examined M.W.1 – Iqbal Ahmed and M.W.2 – Pichayya.

The learned Presiding Officer of the Tribunal analysed the oral and documentary evidence and concluded that the two workmen are entitled to promotion to Category II – Bunker Door Mazdoors with effect from 11-8-1978. Paragraph 10 of the award, which contains discussion on the core issue raised by the union, reads as under:

> "10. At the very outset, the allegation of the petitioner-Union that similarly situated employees in GDK No.5 and 5A Inclines namely, Sarvasri Mohd. Ankoosh, Vallala Veeraiah and Ajit Singh were promoted to Category-II to work as Lorry Muccadam/Bunker Door Mazdoor with effect from 1-8-1978. A reading of Ex.W4 would reveal that Sri Mohd. Ankoosh, General Mazdoor, Vallala Veeraiah, Coal Filler and Ajit Singh, GDK No.5 Incline were promoted to Category II to work as Lorry Muccadam/ Bunker Door Mazdoor at GDK No.5 Incline w.e.f. 1-8-1978. Their duties are to work as per the instructions of the superiors from time to time, they will be fully responsible for lorries and their arrangements (i.e. if they are not there, they must inform superior, if necessary to CSP and arrange), they should ensure prior loading of lorries, they will keep the area below and around bunker clean and tidy, they will issue challans for all lorries, they will report to their superiors any defect they notice in the bunker doors, gears etc. These are the works the above promoted workers should perform. The evidence of W.W.1 is that he is working as Bunker Door Mazdoor since 1980 onwards, he was discharging the duties of Category-II, he may be promoted to Category II from Category-I. In cross examination of W.W.1 he deposed that there is job description for Lorry Muccadam, but there is no description given for Bunker Door Mazdoor. He further deposed that wherever there is no full work for Lorry Muccadam double designation was given to make use of them as Lorry Muccadam/Bunker Door Mazdoor. As Bunker Door Mazdoor, he notes down the lorry coming for loading. It is incorrect to suggest that Lorry Muccadam/Bunker Door Mazdoor is carrying on both the duties and as Lorry Muccadam is a higher category, that category wage is paid to the workman, i.e. Category-II. Whenever a lorry

> comes for loading the coal, he opens a door and the coal automatically load the lorry. Later, he prepares a challan. It is not true to suggest that the Bunker Door Mazdoor only opens and closes the door of bunker and he never discharged Lorry Muccadam's job. So, from the above evidence, it is clear that Sarvasri Mohd. Ankoosh, Vallala Veeraiah and Ajit Singh were promoted to Category-II to work as Lorry Muccadam/Bunker Door Mazdoor with effect from 1-8-1978. Similarly, these concerned workmen in this dispute are also entitled for similar promotion from 1-8-1978. It is pertinent to note that during the conciliation proceedings, the management informed that clarification is sought from the Coal India Limited, so as to assess as to what category is being given to the workmen in their organization. Hence, sought for time to submit their views. It is clear that the respondent-Management did not dispute that the workmen are not working as Bunker Door Mazdoors from 1978. It is seen that Bunker Door Mazdoors are given Category-II wages in the Singareni Collieries Company Limited also. Hence, I find that the concerned workmen in this dispute are liable for promotion to Category-II from 1-8-1978 although the respondent-Management extracting same work as that of Bunker Door Mazdoors Category-II from these two concerned workmen."

Ms. V. Uma Devi criticised the award by arguing that the finding recorded by the Tribunal is based on non-reading and misreading of evidence. She greatly emphasisd that even though the learned Presiding Officer referred to the statement of M.W.2 – Pichayya, who categorically averred that the working conditions at GDK-2 and 2A Inclines are altogether different than GDK-5 and 5-A Inclines, he did not deal with the same and ordered promotion of the workmen without going into the issue of their entitlement. Ms. Uma Devi then argued that promotion cannot be claimed by the workmen as of right and it depends on the availability of vacancies, the evaluation of the work and performance of the employees.

Sri N. Krishna Murthy, learned counsel appearing for respondent No.2 supported the award and argued that in exercise of the power vested under Article 226 of the Constitution, the High Court cannot interfere with the finding recorded by the Tribunal regarding the

nature of work performed by the employees and their entitlement to be promoted from Category-I to Category-II.

Before dealing with the respective arguments, I consider it necessary to take cognizance of the limited scope of the High Court's power of judicial review in matters involving challenge to the orders passed by the quasi-judicial authorities and awards etc. passed by judicial bodies created under various statutes.

The power of judicial review vested in the High Court under Article 226 of the Constitution of India can be exercised in such matters only if it is shown that the adjudication made by the quasi-judicial authority suffers from any jurisdictional infirmity or is vitiated due to violation of the rules of natural justice or the findings recorded by the concerned authority are vitiated by an error of law apparent on the face of the record. This Court can scrutinise the matter to satisfy itself that the decision-making process is not tainted by arbitrariness, mala fides or violation of the rules of natural justice, but cannot sit in appeal over the actual decision except when it is shown to be perverse.

A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals or quasi-judicial authorities. A writ can also be issued where, in exercise of jurisdiction conferred on it, the Court or the Tribunal or quasi-judicial authority acts illegally or improperly, i.e., it decides a question without giving an opportunity of hearing to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of certiorari is supervisory in nature and not appellate one. This necessarily means that the finding of fact reached by the inferior Court, Tribunal etc., as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. An error of law is one which can be discovered

on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or quasi-judicial authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of certiorari. A finding of fact recorded by an inferior Court or Tribunal or quasi-judicial authority can be corrected only if it is shown that in recording the said finding, the Court etc., had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as error of law which can be corrected by issuing a writ of certiorari. However, sufficiency or adequacy of the evidence relied upon by the inferior Court of Tribunal or quasi-judicial authority cannot be gone into by the High Court while considering the prayer for issue of a writ of certiorari. Likewise, mere possibility of forming a different opinion on re-appreciation of evidence produced by the parties is not sufficient for issue of a writ of certiorari.

In **Syed Yakoob v. K.S. Radhakrishnan**[1], the Supreme Court considered the scope of the High Courts' power to issue a writ of certiorari and laid down the following propositions:

> "i) A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.
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> ii) The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of

the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

iii) A finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court."

The proposition laid down in **Sayed Yakoob[1] (supra)** has been reiterated in a recent judgment in **Mohd. Shahnawaz Akhtar & Anr. v. Ist ADJ Varanasi & ors.**[2].

In **Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others**[3], their Lordships of the Supreme Court, while dealing with the scope of High Court's power under Article 226 to re-appreciate the evidence produced before the trial Judge, held as under:

"Where the evidence adduced before the trial Judge was not so immaculate that another Judge might not have taken a different view, it cannot be said that there was no evidence on which the trial Judge could have come to the conclusion he did. When the trial Court accepts the evidence, the High Court which is not hearing an appeal cannot be expected to take a different view in exercising jurisdiction under Articles 226 and 227."

In **R.S. Saini v. State of Punjab and others**[4], the Supreme Court upheld the order passed by the High Court dismissing the writ

petition filed against the order of the petitioner's removal from the office of the President of Municipal Committee. Some of the observations made in that decision, which are worth noticing read as under:

> "The court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

In **Surya Dev Rai v. Ram Chander Rai**[5], the Supreme Court noted the history of the development of High Court's jurisdiction to issue writs, orders or directions under Articles 226 and 227 of the Constitution of India and laid down the following propositions:

> "i) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.
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> ii) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.
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> iii) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court

> as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.
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> iv) The parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where "a stitch in time would save nine". At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge."

If the impugned award is scrutinised in the light of the above noted principles, it becomes clear that the learned Presiding Officer accepted the claim of the workmen because the evidence produced by the parties clearly revealed that they were regularly discharging the duties of Bunker Door Mazdoors, and other similarly situated employees, who were working on GDK-5 Incline, had been promoted to Category-II. It is true that the impugned award does not contain an elaborate analysis of the statement of M.W.2, but this omission is not fatal to the conclusion recorded by the Tribunal because no material has been produced before the Court to show that the service conditions of the employees of the same category posted in different Inclines are different and their promotions are governed by different sets of rules, regulations or standing orders.

In the premise aforesaid, I hold that the award under challenge does not suffer from any error of law warranting interference under

Article 226 of the Constitution of India and the writ petition is liable to be dismissed. Ordered accordingly.

G.S. SINGHVI, C.J.

5th December, 2006

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[1] AIR 1964 SC 477
[2] JT 2002 (8) SC 69 = (2002) 9 SCC 375
[3] AIR 1970 SC 61
[4] JT 1999 (6) SC 507 = (1999) 8 SCC 90
[5] AIR 2003 SC 3044